


To the Honorable Council
City of Norfolk, Virginia

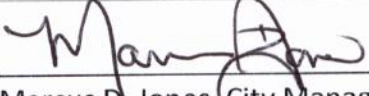
November 17, 2015

From: David S. Freeman, AICP
Director of General Services

Subject: Renewal of Lease Agreement
between the City of Norfolk and
Friends of Fred Heutte Foundation for
property located at 1000 Botetourt
Gardens

Reviewed: 
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Marcus D. Jones, City Manager

Item Number:

PH-1

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving the renewal of a lease agreement between the City of Norfolk ("city") and Friends of Fred Heutte Foundation ("Heutte") for property located at 1000 Botetourt Gardens.

IV. **Analysis**

This agreement will permit Heutte continuance of the duties and responsibilities of their non-profit organization. The term of the lease shall commence on January 1, 2016 and it shall terminate on December 31, 2021, or at any time one month's notice is given by either party. This lease agreement shall be subject to revocation by Council. The city is named as additional insured and proof of insurance is required.

V. **Financial Impact**

The city has allowed Heutte to operate in the property doing horticultural and educational work since its conveyance to the city from Norfolk Redevelopment and Housing Authority ("NRHA") for the annual rental rate of One Dollar (\$1.00). However, the City is not responsible for basic upkeep and general maintenance, nor any utilities, taxes, or assessments associated with the property.

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

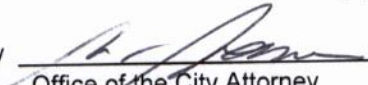
IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement
- Background Information

Form and Correctness Approved: 

By 
Office of the City Attorney

Contents Approved:

By 
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH THE FRIENDS
OF FRED HEUTTE FOUNDATION AS LESSEE, FOR THE PROPERTY
KNOWN AS 1000 BOTETOURT GARDENS IN THE CITY OF NORFOLK.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Lease Agreement between the City of Norfolk as lessor, and The Friends of Fred Heutte Foundation as lessee, a copy of which is hereto attached as Exhibit A, by which the City of Norfolk leases to The Friends of Fred Heutte Foundation that certain property known as 1000 Botetourt Gardens, in the City of Norfolk, Virginia, are hereby approved.

Section 2:- That the City Manager is authorized to execute said Lease Agreement for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into effective as of _____, ____ 2015, between **THE CITY OF NORFOLK** ("Lessor"), a municipal corporation of the Commonwealth of Virginia, and **THE FRIENDS OF FRED HEUTTE FOUNDATION**, ("Lessee"), a Virginia non-stock corporation.

WITNESSETH:

For and in consideration of the rental hereby reserved and the terms and conditions set forth herein, the Lessee rents and the Lessor lets the property known as 1000 Botetourt Gardens, in the City of Norfolk, Virginia. The property also known as the Fred Heutte Center ("Premises"), as more particularly described in Exhibit A, is hereto attached and incorporated by reference.

1. Use of Premises by Lessee

The Premises are to be used as an office, a library, a museum, an exhibit center, classrooms, for meetings and special events, and for no other purpose without the written consent of Lessor. Lessor reserves the right to terminate this Lease Agreement should Lessee fail to use the Premises as allowed in this section of the Lease Agreement.

2. Use of Premises by Lessor.

The Lessor reserves the right of usage of the Fred Heutte Center ("Center"), or any part thereof (subject to prior reservations), with a minimum of thirty (30) days advance notice to the Lessee, and without fee, for indoor or outdoor meetings, programs or events not to exceed twelve (12) usages per year or two (2) such usages in any one month. The Lessor shall be responsible for labor costs incurred by the Lessee for such usage and shall reimburse the Lessee accordingly.

Parties using the Premises for such indoor or outdoor meetings, programs or events, as authorized by the Lessor, shall abide by all regulations as established by the Lessor and Lessee.

3. Term

The term of this Lease Agreement shall be for five years beginning on January 1, 2016 and ending on December 31, 2020, unless terminated prior to that time.

4. Rental Fee

Lessee will pay annual rent in the amount of One Dollar (\$1.00) during the term of this Lease Agreement.

5. Premises Accepted "As Is"

It is the intention of Lessor to grant Lessee possession of the Premises in its present condition and without involving any expense, guarantee, or other obligation on behalf of Lessor in connection with the daily or routine care and upkeep of the Premises. Lessee accepts the Premises as-is and agrees to maintain the Premises in reasonable repair in the purview of the Lessor.

6. Maintenance and Repairs

Lessee shall undertake interior and exterior repairs and maintenance, including maintenance of the grounds, as necessary and at its own cost and expense. The Premises are the centerpiece of the Ghent Square neighborhood. The grounds around the building have to be watered and maintained by Lessee in a neat and attractive appearance, satisfactory to Lessor. No alteration of plantings or vegetation will be made without the prior written consent of Lessor.

Lessor reserves the right of entry upon the Premises for itself, its agents or assigns for the purpose of inspecting the Premises and Lessee agrees to permit Lessor or its agents to enter upon the Premises as long as such entry does not unduly interfere with Lessee's reasonable use of the Premises in conformance with this Lease Agreement.

Lessor's involvement in the upkeep of the Premises will be strictly limited to major maintenance of the Premises such as roof replacement, structural failure repairs, replacement of

HVAC, and electrical systems. The security system and plumbing system must be maintained by Lessee, including the payment of any fees for or maintenance required by these respective systems. Any necessary replacements to either of the aforementioned systems, as a result of normal wear and tear, will be completed by the Lessor.

7. Alterations and Additions

Lessee will not make any alterations or additions to the building without the prior written approval of Lessor. Upon giving reasonable notice to Lessee, Lessor may make changes to the Premises, provided that after completion of the changes, Lessee's use of the Premises is not unreasonably diminished. Any improvements built or affixed to the building on the Premises shall become the property of the Lessor and shall not be removed at the termination or expiration of this Lease Agreement.

8. Taxes and Utilities Fees

Lessee shall pay all public and private utilities fees and any taxes or assessments made against the property, its use or the Lease Agreement.

9. Insurance

Lessee shall maintain during the term of this Agreement Commercial General Liability insurance with a limit of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate covering liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under this Agreement. Unless otherwise specifically approved by the City of Norfolk, general liability and automobile/vehicle liability policies will be written in an "occurrence" ISO form approved for coverage in the Commonwealth of Virginia; the City of Norfolk and its employees will be included as "Additional Insured" on such policies. All insurance policies affected by this Agreement shall be primary and noncontributory to

any other insurance or self-insurance maintained by the City. Policy limits may be met via either a singular policy, or in combination with primary and excess, or umbrella, insurance policies. All policies shall provide that the Lessor will receive at least thirty (30) days' written notice in the event of cancellation of, or material change in, any of the policies. If the Lessor fails to maintain the insurance as set forth in this Agreement, the City shall have the right, but not the obligation, to purchase such insurance at Lessee's expense.

Lessee shall furnish the City with two (2) copies of the policies, or a certificate(s) of insurance evidencing policies, required in this Agreement. The certificate(s) shall specifically indicate that the insurance includes any extensions of coverage required above. In the event of cancellation of any of the policies, or material changes therein, the Lessor shall notify the City within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this Agreement. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Agreement, the Lessee shall furnish a certificate of insurance evidencing renewal of such coverage to the City within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this Agreement. Failure by the City, and/or the City's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, or (2) identify a deficiency from evidence that is provided, shall not be construed as a waiver of the Lessee's obligation to maintain such insurance.

Lessee further covenants that it will, at all times during the lease term and at its own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Lessee's inventory, furniture, fixtures and equipment and all parts of the Premises for which the Lessee is responsible as described in this Agreement.

10. Indemnification and Hold Harmless

Lessee agrees that it will hold harmless Lessor from any and all injury or damage to person or property in, on, or about the Premises, including, without limitation, all costs, expense, claims or law suits arising in connection therewith, except for injury or damage arising from Lessor's negligence or willful misconduct.

11. Early Termination

Lessee may vacate Premises at any time, upon one month's prior written notice to Lessor, provided that Lessee is not in default of any condition or term of this Lease Agreement. Lessor may terminate this Lease without cause, upon one month's prior written notice to Lessee.

12. Parking

The Premises have limited on-site parking and Lessor assumes that Lessee's parking requirements will be served through parking on adjacent streets. If the use of on-street parking results in traffic congestion that is unacceptable to the neighborhood, Lessor shall so notify Lessee in writing and Lessee shall have ninety (90) days to correct the problem to the satisfaction of Lessor. Lessee shall be in default of the terms of this Lease Agreement for failing to provide such notice.

12. Fixtures

Lessee agrees not to remove any fixture, appurtenances, or any other article deemed by the Lessor to be part of the real estate, without prior written permission of the Lessor.

13. Notices

Any notice or demand by the parties shall be deemed given if and when posted in the U.S.

Postal Service, by certified or registered mail addressed as follows:

To Lessor:

Bureau Manager
Office of Real Estate
City of Norfolk
232 E. Main Street, Suite 250
Norfolk, VA 23510

To Lessee:

Friends of Fred Heutte Foundation
1000 Botetourt Gardens
Norfolk, VA 23507

14. Damage or Destruction of Premises

In the event that the Premises are significantly damaged or are destroyed by fire or other casualty, either party will have the option of terminating this Lease Agreement upon proper notice to the other party. Any insurance proceeds allocable to the Premises shall be payable to the Lessor and, at the discretion of the Lessor, may be used for the repair or reconstruction of the Premises.

15. Events of Default

The breach of any provision contained in this Lease Agreement shall be deemed an event of default. In addition, vacation from or abandonment of the Premises, or the failure to pay rent due within ten (10) days of date due, shall also be considered events of default.

16. Assignment and Subletting

This Lease Agreement is not assignable by Lessee. No part of the Premises shall be sublet without the written consent of the Lessor. This provision is not intended to prohibit Lessee from renting out the Premises as allowed in Section 1.

17. Legal Compliance

Lessee will comply with all federal, state and local laws, regulations and policies.

18. Governing Law

This Lease Agreement is governed by the laws of the Commonwealth of Virginia.

19. Choice of Venue

Venue is in the courts of the City of Norfolk, Virginia.

20. Miscellaneous Provisions

- A. Lessee shall not pledge or encumber its interest in the Premises.
- B. The building on the Premises is protected by a burglar alarm system. Lessee will keep the system in force and will be responsible for all routine costs and charges relating to the system. Any necessary replacements to either of the aforementioned systems, as a result of normal wear and tear, will be completed by the Lessor. Lessee shall provide the Norfolk Police Department with any information necessary to keep the system operational.

THIS SECTION HAS BEEN LEFT INTENTIONALLY BLANK.

THE FRIENDS OF FRED HEUTTE FOUNDATION

Print Title:

CITY OF NORFOLK

Marcus D. Jones, City Manager

City Clerk
[SEAL]

Approved as to form and correctness:

Deputy City Attorney

EXHIBIT A

Premises

ALL THAT certain lot piece or parcel of land with the buildings and improvements thereon in the City of Norfolk Virginia being known numbered and designated as PARCEL 22 as shown on the plat entitled 'Ghent Square Subdivision of a Portion of Plat of Botetourt - Section 1 and Section 2 Property of Norfolk Redevelopment and Housing Authority" dated May 30 1975 prepared by mcGaughy Marshall and McMillan Architects & Engineers which plat is recorded in the Clerk's Office of the Circuit Court of the City of Norfolk Virginia in May book 28 at Page 275 181B reference being made to said plat for a more particular description of the property

It being the same property conveyed to Lessor by Special Warranty Deed by Norfolk Redevelopment and Housing Authority dated October 4 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk on December 7 2007 and bears instrument number 070043891